

# EHB 2179 Payment to Port Employee's Pension and PERS Eligibility

WPPA 2026 Spring Meeting

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May 19, 2026

# AGENDA

- Background
- Petition for Reconsideration
- Legislative Action
- DRS Internal Review
- DRS Analysis and Decision
- Questions



# BACKGROUND

- In 2024, the Department of Retirement Systems (DRS or the Department) conducted compliance review CR23-046 of the Port of Vancouver (Port) to ensure compliance with retirement regulations in the areas of member eligibility and correct reporting of retirees returning to work.
- DRS found<sup>2</sup> that the Port did not report 32 employees who worked in positions eligible for PERS to the Department.

# BACKGROUND CONT.

- The employees were members of skilled trade unions and made contributions to union sponsored plans.
- DRS wrote that the Port “incorrectly believed that membership in a union pension plan exempted an employee from PERS membership”
- DRS required the Port to report the employees as of their first date of eligibility, which ranged from 1999 to 2023.
- On January 8, 2025,<sup>3</sup> DRS gave the Port petition rights for reconsideration of its findings.

# PETITION FOR RECONSIDERATION

- On October 17, 2025,<sup>4</sup> the Port timely petitioned asking for reconsideration of the Department’s conclusion.
- The Port asserted that its enabling statute, RCW 53.08.170, allows it to provide its employees with a pension but prohibits those employees from membership in PERS.
- The Port asserted that DRS’ conclusion in the compliance review “upend[ed] 60 years of established practice among Washington ports, would create crippling liability, and [was] contrary to law.”

# PETITION FOR RECONSIDERATION CONT.

The Port provided the following in support of its argument:

- In 2007, DRS audited the Port and was aware of its contributions to a private defined benefit plan for employees who were also excluded from PERS membership but made no finding or raised any objections.
- Until January 2025, DRS posted information on its Employer Reporting Application Portal website expressly stating that a “port employee who has opted into a covered union pension plan is ineligible for membership in a DRS retirement plan.”
- The Port has negotiated with skilled trade unions, and then the Port of Vancouver Trades Council (PVTC), for collective bargaining agreements that include provisions for the Port’s contributions to pension plans administered under the Taft-Hartley Act. None of the employees represented by the PVTC participate in PERS.

# PETITION FOR RECONSIDERATION CONT.

- The Legislature enacted RCW 53.08.170 in 1955 which, in part, authorized ports to establish retirement benefits for its employees. In 1961, the Washington State Attorney General's Office (AGO) provided an opinion affirming a port's authority "to contribute to an additional pension program established by contract between a trade association acting as collective bargaining agent for various employers including a port district and a labor union representing, among others[,]" employees who are members of PERS.<sup>6</sup>

# PETITION FOR RECONSIDERATION CONT.

- The legislative history of RCW 53.08.170 supports that the Port may not contribute to both a private defined benefit plan and PERS for an employee at the same time. The following are of note:
  - Amendments made in 1965, requiring that “no port district employee shall be allowed to apply for admission to or be accepted as a member of [PERS] after January 1, 1965, if admission to such system would result in coverage under both a private pension system and [PERS].”
- Amendments made in 2002, which gave port employees access to defined contribution plans. These changes were made in response to amendments made in 1999 to RCW 41.40.023, which allowed employers to contribute to private defined contribution plans but omitted port employees, thereby excluding port employees from participating in employer sponsored defined contribution plans.

# PETITION FOR RECONSIDERATION CONT.

- DRS should be equitably estopped from requiring the Port to retroactively report employees.
- DRS should be barred by the doctrine of laches from requiring the Port to retroactively report employees hired more than three years prior to the date of the compliance review report.

# EHB 2179

- On March 12, 2026, the Washington State Legislature passed EHB<sup>7</sup> 2179, amending RCW 41.40.023 regarding PERS membership. Section (1), subsection (4) of the bill reads as follows:
  - The legislature further intends to clarify the authority of a port district under RCW 53.08.170 to contribute to a private defined benefit pension plan. Consistent with longstanding practice, an employee of a port district who has been, or is, covered by a private Taft-Hartley defined benefit pension plan while employed by a port district on or after January 1, 1965, is exempt from participation in the public employees' retirement system for periods of service covered by that plan.
- The Governor signed the bill into law on March 23, 2026.<sup>8</sup>

# DRS INTERNAL REVIEW

In addition to the Port's petition and supporting documentation, the Petition Examiner reviewed the following:

- Interoffice correspondence<sup>9</sup> from the AGO to the then-Director of PERS, providing an opinion about the 1965 amendment to RCW 53.08.170. The correspondence read in part,
  - [The 1965 proviso] means that if a port district employee is currently being covered by a private pension system, such individual is personally ineligible for membership in [PERS]. Conversely, a port district employee who is presently being covered by [PERS] cannot be covered, at the same time, under a private pension system.

# DRS INTERNAL REVIEW CONT.

- A memorandum<sup>10</sup> from the AGO to the then-Director of PERS answering questions from a Washington port that, as a PERS-employer, asked about the PERS-eligibility of its employees if they were covered under a private pension plan under RCW 53.08.170. The AGO answered in part,
  - Based upon the [1965] proviso, it is now clear that those Port District employees who are covered by a private pension plan...must be regarded as personally ineligible for membership in [PERS] – even though they occupy positions which constitute “eligible positions” under the provisions of chapter 41.40 RCW.

# DRS INTERNAL REVIEW CONT.

- Records between DRS and other ports describing that they were not required to report employees in PERS if those employees were provided a pension plan under RCW 53.08.170.

# DRS ANALYSIS AND DECISION

- In administering the retirement systems, DRS first looks to its statutory authority under Title 41 RCW and the express provisions the legislature has mandated. If necessary, DRS then considers how other regulations should be interpreted and applied in consideration of retirement regulations. In 2024, DRS came to a different conclusion than it had previously regarding a port's authority to provide a private pension and what that meant for employees otherwise eligible for PERS membership. The Department determined that 32 employees of the Port worked in PERS-eligible positions and should have been reported to DRS.

# DRS ANALYSIS AND DECISION

- After reviewing supporting information and, significantly, the Legislature's clarification in 2026, the Department reversed its determination; the Port is not required to report the 32 identified employees for membership in PERS. The Port of Vancouver and other ports have the authority under RCW 53.08.170 to contribute to a private defined benefit pension plan for its employees; those privately covered employees employed on or after January 1, 1965 are exempt from PERS membership for those periods of service covered by the private plan.

# QUESTIONS?



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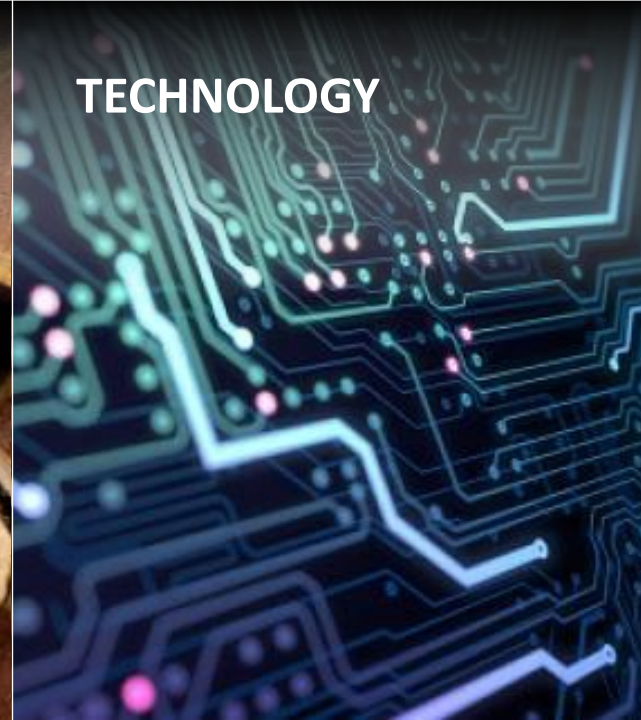
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